REMARKS/ARGUMENTS

Applicants respectfully request reconsideration of the present application in view of the above changes to the claims and the following remarks, which are responsive to the final Office Action mailed June 2, 2009.

I. Interview

Applicants would first like to thank the Examiner for conducting a brief interview to discuss the rejections of the final Office Action. In particular, Applicants appreciate the clarification of the misquoted portion of the claims cited in the final Office Action, as discussed in further detail below.

II. Status of Claims

In the Office Action, Claims 1, 4-7, 12, 16-22, and 26-27 were noted as pending in the application and were rejected. Applicants have slightly amended Claims 1, 22, and 26-27 to further clarify the claimed invention. Applicants respectfully submit that the amendments to Claims 1, 22, and 26-27 do not raise any new issues or introduce any new matter, and as such, should be considered by the Examiner and entered into the record of the present application. As a result, Claims 1, 4-7, 12, 16-22 and 26-27 remain currently pending.

III. Rejection of Claims

The Office Action rejected Claims 1, 4, 16, 19, 22, and 26 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 7,127,521 B2 to Hsu et al. (hereinafter "*Hsu*"). The Office Action further rejected Claim 12 under 35 U.S.C. § 103(a) as being unpatentable over *Hsu* in view of what was well known in the art. Claims 5-7, 17-18, 20-21, and 27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hsu* in view of U.S. Patent No. 5,619,650 to Bach et al. (hereinafter "*Bach*").

a. Claims 1, 16, 19, and 22 Misquoted in Office Action

As discussed during the brief interview with Examiner, the Office Action mistakenly quotes independent Claims 1, 16, 19, and 22 as reciting a data throttle that is "less than or equal to **the *at* least one** of" a first data transfer rate, a second data transfer rate, and a third data transfer rate. The independent claims actually recite a data throttle that is "less than or equal to **the least one** of" a first data transfer rate, a second data transfer rate, and a third data transfer rate. Applicants respectfully assert that the rejections presented in the final Office Action including this misquoted portion of the independent claims are irrelevant and improper. Therefore, Applicants request that the rejections of independent Claims 1, 16, 19, and 22 be withdrawn and the claims be allowed.

b. 35 U.S.C. 102 – *Hsu*

i. Independent Claims 1, 16, 19, and 22

Applicants respectfully assert that *Hsu* does not teach or suggest each of the recitations of independent Claim 1, 16, 19, or 22. In particular, Applicants respectfully assert that *Hsu* does not teach or suggest a data throttle limiting the transfer rate of data from a first host to a second host where the throttle value is ***less than or equal to the least of*** a first data transfer rate of the first host, a second data transfer rate of the second host, and a third data transfer rate of a network between the first and second hosts, as recited, albeit in somewhat different language, in independent Claims 1, 16, 19, and 22.

Hsu is directed to "an apparatus for reducing power consumption in a network linking system [comprising a local network interface card (NIC), a remote NIC, and a network connecting the two NICs], in which a load monitoring module is installed such that the load of the network can be monitored" (*Hsu*, Col. 2, lines 10-14). The disclosure of *Hsu*, however, fails to describe the data transfer rates of the local and remote NICs and the network connecting them. Instead, *Hsu* discloses that each of the local and remote NICs have three possible linking modes, namely 10 Mbps, 100 Mbps, and 1 Gbps. The Office Action appears to equate the three linking

modes of a NIC with the first, second, and third data transfer rates recited in independent Claims 1, 16, 19, and 22 (Official Action, pages 2-3). Applicants respectfully assert that the data transfer rates of independent Claims 1, 16, 19, and 22 are a first data transfer rate **of a first host**, a second data transfer rate **of a second host**, and a third data transfer rate **of a network through which data is transferred from the first host to the second host**. Therefore, the three linking modes of *Hsu* are not the data transfer rates of a first host, a second host, and a network, but rather three possible linking modes of **a single NIC**.

Even if, assuming *arguendo*, the three linking modes of *Hsu* were equivalent to the first, second, and third data transfer rates of independent Claims 1, 16, 19, and 22, *Hsu* still would not teach or suggest all the recitations of the claims. Independent Claims 1, 16, 19, and 22 recite a throttle value ***less than or equal to the least of*** the first, second, and third data transfer rates. Thus, the throttle of *Hsu* would always be set to the least of the three linking modes, or 10 Mbps. To the contrary, *Hsu* describes both setting the linking mode to 1 Gbps (*Hsu*, Col. 4, line 62) and 100 Mbps (*Hsu*, Col. 5, line 10). Therefore, *Hsu* teaches away from setting a throttle value less than or equal to **the least of** the first, second, and third transfer rates.

Applicants additionally point out that *Hsu* fails to disclose obtaining the transfer data rate of a network in between the first and second hosts, as recited, albeit in somewhat different language, in independent Claims 1, 16, 19, and 22. *Hsu* states that "[a]fter linking, the load monitoring module is enabled to perform monitoring of network flow [and] evaluate the average load within a time interval" (*Hsu*, Col. 4, lines 63-65). Nowhere in *Hsu* is there any suggestion of obtaining the actual network data transfer rate. Monitoring the network flow between the local and remote NICs during data transmission to determine an average load is not the same as obtaining the data transfer rate of the network. The average load relates to a measure of the amount of data being sent across a network not the data transfer rate of the network.

Based on the foregoing arguments, Applicants respectfully assert that *Hsu* does not teach or suggest all of the recitations of independent Claims 1, 16, 19, and 22 and respectfully requests that the rejection of these claims be withdrawn.

ii. Dependent Claims 4 and 26

Claims 4 and 26 depend from independent Claims 1 and 22, respectively, and include all of the recitations of the base claim and any intervening claims plus their additional recitations that further distinguish the art applied in the rejection. Thus, for at least the reasons set forth above with respect to independent Claims 1 and 22, it is respectfully submitted that dependent Claims 4 and 26 are further patentable over the references cited as such dependent claims now depend from an allowable base claim.

c. 35 U.S.C. 103 – *Hsu* in view of what was known in the art

i. Dependent Claim 12

Claim 12 depends from independent Claim 1 and includes all of the recitations of the base claim and any intervening claims plus their additional recitations that further distinguish the art applied in the rejection. What was known in the art does not cure the noted deficiencies of *Hsu* and is not cited by the Examiner as doing so. Thus, for at least the reasons set forth above with respect to independent Claim 1, it is respectfully submitted that dependent Claim 12 is further patentable over the references cited as such dependent claim now depends from an allowable base claim.

d. 35 U.S.C. 103 – *Hsu* in view of *Bach*

i. Dependent Claims 5-7, 17-18, 20-21, and 27

Claims 5-7, 17-18, 20-21, and 27 depend from independent Claims 1, 16, 19, and 22, respectively, and include all of the recitations of the base claims and any intervening claims plus their additional recitations that further distinguish the art applied in the rejection. The teachings of *Bach* do not cure the noted deficiencies of *Hsu* and are not cited by the Examiner as doing so. Thus, for at least the reasons set forth above with respect to independent Claims 1, 16, 19, and 22, it is respectfully submitted that dependent Claims 5-7, 17-18, 20-21, and 27 are further

patentable over the references cited as such dependent claims now depend from allowable base claims.

IV. Conclusion

In light of the remarks above, Applicants respectfully submit that the application is in condition for allowance and respectfully requests that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefor (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON September 1, 2009.